

**SUMMARY:** The FHWA is announcing its preliminary determination to grant the applications of the Ford Motor Company (Ford) for exemptions from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions would enable motor carriers to operate commercial motor vehicles (CMVs) manufactured by Ford, and equipped with fuel tanks that do not meet the FHWA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FHWA believes the terms and conditions of the exemptions being considered achieve a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations and requests public comment on Ford's applications. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

**DATES:** Comments must be received on or before September 9, 1999.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. **FHWA-99-5867**, the Docket Clerk, U.S. DOT Dockets, Room **PL-401**, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS-10, (202) 3684009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users may access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room **PL-401**, 400 Seventh Street, SW., Washington, DC 20590-0001, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year.

Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

**Background**

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA-21) (Pub.L. 105-178, 112 Stat. 107). Section 4007 of TEA-21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs for a person(s) seeking regulatory relief from those requirements. An exemption may be up to two years in duration, and may be renewed. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the request.

The TEA-21 requires the FHWA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FHWA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA-21 (63 FR 67600). The regulations (49 CFR part 381) established the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions.

**Ford's Applications for Exemptions**

Ford applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

[FHWA Docket No. **FHWA-99-5867**]-1

**Parts and Accessories Necessary for Safe Operation; Exemption Applications; Minimum Fuel Tank Fill Rate and Certification Labeling**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of applications for exemptions and intent to grant exemptions; request for comments.

certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

Ford produces "Econoline" incomplete vehicles which are completed by second-stage manufacturers for numerous uses, including use as a CMV as defined in 49 CFR 390.5. The completed vehicles are based on a "light truck" platform with load-or passenger-carrying capabilities that meet or exceed the weight-or passenger-carrying thresholds for the applicability of the FMCSRs. Ford indicated it is not possible to accurately estimate the number of Econoline-based vehicles that will be used as CMVs. Of the 19,000 Econoline-based vehicles produced each model year, 13,000 are produced with gasoline fuel configuration, with a percentage of these used as CMVs.

#### **Application for Exemption From the Fill Rate Requirement**

Ford Econoline vehicles are equipped with fuel tanks mounted between the frame rails and use a fill pipe system routed to minimize exposure in the event of a crash. The system is approximately two feet long with several bends, which results in additional internal resistance to fuel flow. When these design characteristics are combined with the vapor generated while filling the tank with gasoline, the maximum filling rate does not exceed 17 gallons per minute. Ford states:

It is difficult to address [§ 393.67(c)(7)(ii)] as a safety requirement. Ford views this portion of Part 393 to be more a subject of convenience. With virtually all filling stations using the industry standard automatic shut-off nozzles, it is unlikely that fuel will be spilled even while using a high flow rate delivery system. These standard nozzles substantially reduce any potential safety risk introduced by filling an Econoline vehicle at a rate above its capacity of 17 gallons per minute.

Further, the U.S. Environmental Protection Agency (EPA) has imposed a 10 gallon per minute limit [40 CFR 80.22(j)] on gasoline fuel flow rates at any "retailer or wholesale purchaser-consumer." This EPA requirement was effective in part on January 1, 1996 and in full on January 1, 1998. As mentioned previously, the Econoline fuel fill system can easily accommodate this fill rate.

Ford believes that denial of the exemption application would result in motor carriers having to retrofit replacement fuel tanks, which could

result in undermining the fuel system integrity of the vehicles.

#### **Application for Exemption From the Certification- Marking Requirement**

Ford indicated that fuel tanks used on Econoline vehicles are not marked in accordance with § 393.67(f). Ford states:

The marking requirements of [§§ 393.67(f)(2) and (f)(3)(ii)] are only identification requirements and do not contribute to the safety of the fuel tank. It acts as a convenient method for [an] inspector to verify that the tank has been self-certified by [its] manufacturer. The subject tanks are already marked with the month and year of manufacture and the Ford production part number satisfying the traceability aspect of the marking requirements. The remaining certification statement will be added but cannot be fitted to all vehicles immediately, hence the need for an exemption. Ford Motor Company believes that there is no negative safety effect of these vehicles not complying with [§§ 393.67(f)(2) and (f)(3)(ii)].

#### **Basis for Preliminary Determination To Grant Exemptions**

The FHWA has reviewed its fill pipe design requirements and believes the fill pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with the EPA's regulations concerning gasoline fuel pumps. While the FHWA requirement may be appropriate for diesel fuel-powered commercial motor vehicles, it mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at a rate twice the maximum rate gasoline fuel pumps are designed to dispense fuel.

The EPA requires (40 CFR 80.22) that every retailer and wholesale purchaser-consumer must limit each nozzle from which gasoline or methanol is introduced into motor vehicles to a maximum fuel flow rate not to exceed 10 gallons per minute (37.9 liters per minute). Any dispensing pump that is dedicated exclusively to heavy-duty vehicles is exempt from the requirement.

Since the EPA's regulation includes an exemption for dispensing pumps used exclusively for refueling heavy-duty vehicles, it is possible that some of the gasoline-powered vehicles that would be exempted could be refueled at a location (e.g., at a fleet terminal) where the dispensing equipment exceeds 10 gallons per minute. However, the FHWA does not believe this should present a safety problem because the fill pipe design used by Ford is capable of receiving fuel at a rate of 17 gallons per minute. The 17-gallon-per-minute rate is only 15 percent less than the requirement in § 393.65. The agency believes the 17-gallon-per-

minute rate will achieve a level of safety that is equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii). Gasoline fuel pumps that are dedicated for heavy-duty trucks and buses may dispense fuel at a rate in excess of 10 gallons per minute, but the FHWA does not believe the rate would exceed 17 gallons per minute. The agency requests comments on this issue.

In addition to considering the regulatory inconsistencies between the FHWA and EPA requirements, the FHWA reviewed available information on the origin of the rule concerning fill pipes. The FHWA's 20-gallon per minute rate in § 393.67(c)(7)(ii) is based on the Society of Automotive Engineers' (SAE) recommended practice "Side Mounted Gasoline Tanks" as revised in 1949. The SAE later published fuel tank manufacturing practices in SAE J703, "Fuel Systems," an information report which consisted of the former Interstate Commerce Commission's requirements for fuel systems and tanks (codified at 49 CFR 193.65 in the 1953 edition of the Code of Federal Regulations). The information report retained the 20-gallon-per-minute rate. The SAE currently covers this subject under recommended practice SAE J703 "Fuel Systems-Truck and Truck Tractors." The 1995 version of the recommended practice continues to use the 20-gallon-per-minute criterion for fill pipes.

The FHWA does not have technical documentation explaining the rationale for the SAE's original use of the 20-gallon-per-minute rate in 1949 and believes the adoption of the criterion in Federal regulations may have resulted in its continued use in the current SAE recommended practice which references §§ 393.65 and 393.67. As stated by the SAE, "[t]he intent of this document is not only to clarify the procedures and reflect the best currently known practices, but also to prescribe requirements \* \* \* that meet or exceed all corresponding performance requirements of FMCSR 393.65 and 393.67 that were in effect at the time of issue."

The FHWA believes the current requirement may need to be reconsidered in light of the EPA requirements. While the FHWA reviews this issue, motor carriers should not be penalized for operating vehicles with non-compliant fill pipes that they had no practical means of identifying. The agency has made a preliminary determination that it is appropriate to grant an exemption to § 393.67(c)(7)(ii) for interstate motor carriers operating Ford Econoline vehicles and requests public comment on Ford's application.

With regard to Ford's application for an exemption to the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the FHWA agrees with Ford that there is no readily apparent adverse impact on safety associated with the absence of the required markings. Although the FHWA considers marking and certification important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the FHWA's requirements and those that are not, the FHWA does not believe the operators of the Ford Econoline vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67.

The absence of certification labeling resulted in certain State enforcement officials prohibiting the operation of small buses built on Ford Econoline platforms. The State officials and motor carriers operating those vehicles discussed the issue with Ford and requested assistance in determining whether the fuel tanks met the requirements of § 393.67. Prior to notification from State enforcement officials and motor carriers, Ford was unaware that customers subject to the FMCSRs are required to have fuel tanks that meet the FHWA's requirements, including marking. As a vehicle manufacturer, Ford is fully aware of all applicable Federal Motor Vehicle Safety Standards issued and enforced by the National Highway Traffic Safety Administration, the agency in the U.S. Department of Transportation responsible for regulating motor vehicle and equipment manufacturers. Ford is less familiar with the equipment requirements of the FHWA, the agency responsible for regulating motor carriers.

Ford has met with FHWA staff to discuss the agency's requirements and conducted certain tests to determine whether its fuel tanks satisfy § 393.67. It was determined that the tanks do not meet the fill pipe requirements, and do not have the necessary certification. An exemption to the certification is needed because Ford cannot misrepresent its product by certifying compliance with all applicable provisions in § 393.67 while its fill pipe designs allow only 17 gallons of gasoline fuel per minute to flow into the fuel tank. The agency believes granting exemptions for the affected motor carriers is the most effective way to resolve the problem, while ensuring highway safety.

#### Terms and Conditions for the Exemption

The FHWA would provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating Ford Econoline-based vehicles. The exemption would be valid for two years from the date of approval, unless revoked earlier by the FHWA. Ford, or any of the affected motor carriers, may apply to the FHWA for a renewal. The exemption would preempt inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain E30, E37, E39, E40, or E47 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA-9002-G\*, F3UA-9002-H\*, F4UA-9002-V\*, F4UA-9002-X\*, F5UA-9002-V\*, F5UA-9002-X\*, F6UA-9002-Y\*, F6UA-9002-Z\*, F7UA-9002-C\*, and F7UA-9002D\* where the asterisk (\*) represents a "wild card" character (any character of the alphabet). The FHWA believes this information is sufficient and requests public comment.

#### Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FHWA is requesting public comment from all interested persons on the exemption applications from Ford. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FHWA may grant the exemptions at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.48.

Issued on August 2, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

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